



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2005

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2005-05439

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226348.

The Texas Health and Human Services Commission (the "commission") received a request for "de-identified (patient level) Medicaid claims and eligibility data for Texas Medicaid beneficiaries . . . with service dates for the period January 1, 2002 – current." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You seek to withhold the requested information under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 provides in part:

- (a) Except for purposes directly connected with the administration of the [Department of Human Services'] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a).² In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” See Open Records Decision No. 584 at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. See Hum. Res. Code § 21.012 (Department of Human Services shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department’s assistance programs to purposes directly connected with administration of programs); see also 42 C.F.R. § 431.306(a) (“The [state] agency must have criteria specifying the conditions for release and use of information about [Medicaid] applicants and recipients.”), *id.* § 431.306(d) (“agency must obtain permission from a family or individual . . . before responding to a request for information from an outside source”); Open Records Decision No. 166 (1977).

You inform us that the submitted information relates to recipients of assistance under the Medicaid program established under Title XIX of the federal Social Security Act. See 42 U.S.C. §§ 1301 *et seq.* You also state that the release of this information in this instance would not be for purposes directly connected with the administration of the Medicaid program. We therefore agree that the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resource Code.³

You also ask this office to issue a previous determination that would permit the commission to withhold information relating to Medicaid recipients without the necessity of again requesting an attorney general decision under the Act. See Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

²We note that the former Texas Department of Human Services (“DHS”) ceased operations on September 1, 2004, and that the commission now administers the Medicaid program formerly administered by DHS. See Texas Department of Human Services website at <http://www.dhs.state.tx.us>; see also Health and Human Services Commission website at <http://www.hhsc.state.tx.us>; Act of June 2, 2003, 78th Leg., R.S., ch. 198, 2003 Tex. Sess. Law Serv. 611.

³As we are able to make this determination, we do not address your other arguments against disclosure.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

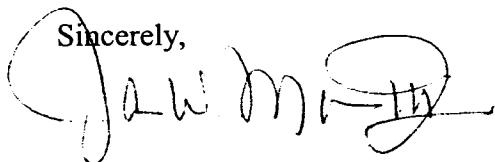
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 226348

Enc: Submitted documents

c: Dr. Howard G. Birnbaum
Analysis Group
111 Huntington Avenue, Tenth Floor
Boston, Massachusetts 02199
(w/o enclosures)